IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 306 OF 2006

Laxman Baburao Padwal,)
Convict No. C/9192, presently lodged at)
Yetrwada Central Prison,)
Pune.)...Appellant

Versus

State of Maharashtra ...Respondent

None for the appellant.
Dr. F.R. Shaikh, Additional Public Prosecutor, for the State.

CORAM: **V.G. PALSHIKAR, Ag. C.J., &**
SMT. NISHITA MHATRE, J.

DATE: **AUGUST 16, 2006**.

ORAL JUDGMENT (Per Palshikar, Ag. C.J.)

When the appeal was called out, none appeared for the accused. The matter is listed for final hearing. The accused was represented by an advocate appointed by this Court. With the assistance of the learned Additional Public Prosecutor, we have scrutinised the evidence on record and re-appreciated the evidence. We, therefore, proceed to decide the matter on merits on scrutiny and perusal of the record.

2. The prosecution story, stated briefly, is that on 23rd September, 1991, one Atmaram Shripad Pote found a dead body of a female in his well in the field. He, therefore, reported the matter to the police, on the basis of which, the police registered an accidental death and started investigations under Section 174 of the Criminal Procedure Code. The body was removed from the well. *Panchanama* was drawn and post-mortem was conducted. During the investigation, the police sought identification of the dead body and, according to the police, nobody could identify the dead body and, therefore, the dead body was cremated. However, in spite of agreement, the investigation continued and ultimately the accused was arrested, interrogated and finally charge-sheeted. Factually, therefore, the body was identified as one belonging to Shaila, daughter of P.W.4. Ultimately, the police, on certain statements made during the investigation, charge-sheeted the accused under Sections 302, 201, 363 and 366 of the Indian Penal Code (I.P.C.). After the charge-sheet was filed, the Judicial Magistrate, First Class, committed him for trial to the Sessions Court. In the Sessions Court, in all, 16 witnesses were examined and on appreciation of the evidence, the learned Sessions Judge came to the conclusion that the accused was guilty of the offence charged and, therefore, proceeded to convict the accused under Section 302 of the

I.P.C. and sentence to suffer imprisonment for life. The learned Sessions Judge, however, acquitted the accused of all the other charges.

3. A perusal of the entire evidence on record shows that there is absolutely no evidence to connect the accused with the crime. There is also no evidence that the dead body was that of Shaila. There is no identification of the dead body at all. It appears that the learned trial Judge has relied on the evidence of the brother of the victim (P.W.2) who deposed that the accused and the victim were having cordial relationship - probably they were in love with each other - and there were several meetings between the accused and the victim. To almost all meetings, P.W.2 was a party. In fact, he was a messenger between the two. It appears from his deposition that he was supporting his sister in her friendship with the accused. His entire deposition reveals no grudge against the accused either in his mind or the victim's mind, assuming that the victim was Shaila.

4. The second circumstance relied upon by the learned Judge is the fact that a ready-made cloth seller (P.W.3) in Pune selling ready-made clothes, near Saras Baug, identified the accused as the person

who came to his shop with a girl, wearing skirt and shirt, and sold jeans of the size of that girl to the accused and it was this jeans that was found on the person of the dead body. Even if the identify of the jeans is accepted, the maximum that is proved by the prosecution is the fact that a girl of about 15 to 17 years was found in the jeans sold to her by the witness.

5. It is interesting to note that P.W. 7, a Police Constable, named Mohan Lalappa Jadhav, had met the accused and the victim on 20th September, 1991 at Chakan S.T. Stand. Yet, he was not contacted for identifying the body. In our opinion, the investigation and the prosecution were loosely conducted.

6. Yet another circumstance, which is used by the learned trial Judge for recording conviction under Section 302, I.P.C., was the evidence of a goldsmith (P.W.5), who purchased the ear ring from the accused in the presence of the victim, and he produced the same during investigation. Obviously, therefore, he did see the victim. He was alive when the transaction took place, and yet, his help was not sought for identification of the dead body. It appears that all this evidence was collected by the police after cremation of the dead body

took place and, therefore, the witnesses were not confronted with the question as to the identification of the dead body. Important evidence of Dr. Khaire (P.W. 14), Medical Officer, who performed the post-mortem is completely silent as to the cause of death. He does not depose that the death was caused violently. He speaks of death being caused due to asphyxia caused by drowning. In the absence of any evidence of strangulation, and in the absence of any such conclusion by the doctor conducting the post-mortem, in our opinion, it would be illegal to record conviction under Section 302 I.P.C. It is obviously a case based totally on circumstantial evidence and the chain of events is not proved at all. The following things are not proved by the prosecution:-

(i) Identification of the dead body;

(ii) relationship between the deceased and the accused;

(iii) absence of evidence recording cause of death.

It cannot, therefore, be said that all the links in the chain of circumstantial evidence are established by the prosecution beyond reasonable doubt. In fact, this is a case where doubt lurks in every link of circumstances. It is not known when the victim left Bombay for Pimpal via. Pune, when was the purchase of jeans effected, and why

the seller was not asked to identify the body. All these circumstances, apart from the evidence of the prosecution witnesses, create a doubt in the mind of a reasonable prudent man regarding the correctness of the evidence available for the prosecution in this case. Convicting an individual on the basis of such evidence is, in our opinion, an error of law which requires to be corrected. The prosecution has failed to prove that the victim was subjected to violence resulting in her death. In such circumstances, conviction under Section 302, I.P.C., is unsustainable.

7. In the result, the appeal succeeds and is allowed. The accused is acquitted of the charge and conviction under Section 302 I.P.C. The accused is presently in custody. He is liable to be released forthwith, if not required in any other case.